

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

August 5, 1997

UNITED STATES OF AMERICA,)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
vs.)	
)	OCAHO Case No. 97A00107
ALLEN LEE DOCIMO &)	
KATHRYN DOCIMO, INDIVIDUALLY)	
AND D/B/A DOUBLE DEAL PIZZA)	
A/K/A DOUBLE PLAY PIZZA)	

FINAL DECISION AND ORDER OF JUDGMENT BY DEFAULT

PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a (INA or the Act). The United States Department of Justice, Immigration and Naturalization Service (INS) is the complainant and Allen Lee Docimo and Kathryn Docimo, individually and d/b/a Double Deal Pizza a/k/a Double Play Pizza, are the respondents. On May 16, 1997, INS filed a complaint in two counts with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that respondents: (1) failed to ensure that one individual hired after November 6, 1986 properly completed Section 1 of the Employment Eligibility Verification Form (Form I-9); and (2) hired another individual for whom they failed to timely prepare a Form I-9. Civil money penalties in the total amount of \$600.00 are sought by complainant.

A copy of the complaint, along with a notice of hearing was sent to Richard A. Ruben, Esq., who had filed a request for hearing on behalf of the respondents. That notice directed that an answer was to be filed within thirty (30) days, that failure could lead to default, and that proceedings would be governed by Department of Justice regulations.¹ The return receipt indicates that service was complete on May 27, 1997. No answer to the complaint was filed.

¹ Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. Pt. 68 (1996).

On July 8, 1997, complainant filed a Motion for Default Judgment on the grounds that respondent had failed to file an answer to the complaint within the time provided.² OCAHO rules provide that the failure of a respondent to file a timely answer shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint. The Administrative Law Judge may thereafter enter judgment by default. 28 C.F.R. § 68.9(b) (1996).

On July 9, 1997, respondent was ordered to show cause within fifteen (15) days why Default Judgment should not issue, or in the alternative, to show good cause for its prior failure to answer, and to file an answer which comports with 28 C.F.R. § 68.9. No response was made to this Order, no request for extension of time was made, and the time for response has lapsed.

The purpose of a default judgment both historically and in contemporary practice is to protect a diligent party from delay caused by an essentially unresponsive party, see generally 10 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 2681, (2nd Edition 1983 & Supp. 1994). That purpose is well served by default judgment here. I accept as true all factual allegations of the complaint, which describe with specificity the violations more fully set forth in my findings.

FINDINGS, CONCLUSIONS, AND ORDER

I have considered the record in this case, on the basis of which I find and conclude that:

1. Complainant's Motion for Default Judgment is granted.
2. As alleged in the complaint, respondent is in violation of 8 U.S.C. § 1324a(a)(1) with respect to each individual named in the complaint, as to whom the respondent is found to have:
 - (a) Count I: failed to ensure that Rafael M. Rios a.k.a. Rafael Rios-Mariscal, Rafael Rios, and R. Rios, hired after November 6, 1986, properly completed Section 1 of the Employment Eligibility Verification Form (Form I-9), at a civil money penalty of \$400.00;
 - (b) Count II: failed to timely prepare a Form I-9 for Christopher Lee Andrews a.k.a. Chris Andrews and C. Andrews, hired after November 6, 1986, at a civil penalty of \$200.00.
3. Respondent shall pay a civil money penalty in the total amount of \$600.00 for

² 28 C.F.R. § 68.9(a) provides that the respondent shall have thirty days after service of a complaint to file an answer. Section 68.8(c) provides that when service is had by mail, five days shall be added to the prescribed period.

violations listed in the complaint.

SO ORDERED.

Dated and entered this 4th day of August, 1997.

Ellen K. Thomas
Administrative Law Judge

Appeal Information

This Order shall become the final order of the Attorney General unless, within 30 days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§ 1324a(e)(7) and (8), and 28 C.F.R. § 68.53.

CERTIFICATE OF SERVICE

I certify that on this 5th day of August, 1997, I have served copies of the foregoing Final Decision and Order of Judgment by Default on the following parties at the addresses indicated.

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